

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-43185

5 **RICHARD NEAL, JR.,**

6 Defendant-Appellant

7 **APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO**
8 **COUNTY**

9 **Maria Dominguez, Metropolitan Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Allison H. Jaramillo, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **MEDINA, Chief Judge.**

19 {1} Defendant appeals following his metropolitan court bench trial conviction for
20 aggravated driving while under the influence of intoxicating liquor/drugs (first
21 offense). In this Court's notice of proposed disposition, we proposed to summarily
22 affirm. Defendant filed a memorandum in opposition (MIO), which we have duly
23 considered. Defendant continues to argue in his MIO that the metropolitan court

1 erred in considering his breath test refusal as consciousness of guilt and that evidence
2 was insufficient to support his conviction. [MIO 4-5] Remaining unpersuaded, we
3 affirm.

4 {2} In our notice of proposed disposition, we explained that New Mexico courts
5 have long held that a fact-finder may reasonably infer consciousness of guilt and
6 fear of the results from a defendant’s refusal to take a breath test. *See State v. Storey*,
7 2018-NMCA-009, ¶ 40, 410 P.3d 256 (“New Mexico courts repeatedly have relied
8 on evidence of refusal to consent to breath . . . alcohol tests to support convictions
9 for driving while under the influence of alcohol.”). [CN 2] In addition, we
10 recognized Defendant had asserted that the testifying officer’s testimony was
11 unreliable and the officer’s observations of Defendant’s performance on the
12 Standardized Field Sobriety Tests (SFST) should not have been considered because
13 of Defendant’s apparent recent injury. [CN 5] However, we also outlined the ample
14 evidence in support of Defendant’s conviction and we explained that it is not this
15 Court’s role to supplant the trial court’s view of the evidence. [CN 3-5] *See State v.*
16 *Multine*, 2025-NMCA-013, ¶ 37, 584 P.3d 898 (refusing to reverse based on
17 defendant’s argument that his bad back attributed to his poor performance on the
18 SFST because the fact-finder was not required to accept the defense); *see also State*
19 *v. Garcia*, 2005-NMSC-017, ¶ 12, 138 N.M. 1, 116 P.3d 72 (“The [appellate] court
20 should not re[]weigh the evidence to determine if there was another hypothesis that

1 would support innocence or replace the fact-finder’s view of the evidence with the
2 appellate court’s own view of the evidence.”); *State v. Rojo*, 1999-NMSC-001, ¶ 19,
3 126 N.M. 438, 971 P.2d 829 (“Contrary evidence supporting acquittal does not
4 provide a basis for reversal because the [fact-finder] is free to reject [the d]efendant’s
5 version of the facts.”).

6 {3} Defendant has not otherwise asserted any fact, law, or argument in his MIO
7 that persuades us that our notice of proposed disposition was erroneous. *See State v.*
8 *Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a
9 party responding to a summary calendar notice must come forward and specifically
10 point out errors of law and fact, and the repetition of earlier arguments does not
11 fulfill this requirement), *superseded by statute on other grounds as stated in State v.*
12 *Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; *see also Hennessy v. Duryea*, 1998-
13 NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held
14 that, in summary calendar cases, the burden is on the party opposing the proposed
15 disposition to clearly point out errors in fact or law.”). Accordingly, for the reasons
16 stated in our notice of proposed disposition and herein, we affirm Defendant’s
17 conviction.

18 {4} **IT IS SO ORDERED.**

19 
20 **JACQUELINE R. MEDINA, Chief Judge**

1 **WE CONCUR:**

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3 **JENNIFER L. ATTREP, Judge**

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5 **JANE B. YOHALEM, Judge**